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SUMMARY RECORD OF THE 1284th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 August 1998, at 3 p.m.

Chairman: Mr. DIACONU
Later: Mr. ABOUL-NASR

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The meeting was called to order at 3.10 p.m.

PREVENTION OF RACIAL DISCRIMINATION: EARLY WARNING MEASURES AND URGENT ACTI PROCEDURES (agenda item 3)

Examination of the situation in Bosnia and Herzegovina (HRI/CORE/1/Add.89)

1. At the invitation of the Chairman, Mr. Jerkic, Mr. Dutina and Ms. Palavric (Bosnia and Herzegovina) took places at the Committee table.

2. Mr. JERKIC (Bosnia and Herzegovina) said that his country was slowly recovering from the tragic events of the years 1992 to 1995 and was bravely tackling the complex task of constructing a modern European State. Bosnia a Herzegovina had been the scene of the worst imaginable violations of human rights, most of them inspired by religious and ethnic considerations. The memory of those events had to be kept alive in order to ensure that such a scenario did not recur; but at the same time the country did not wish to remain a hostage to its past, and all the citizens aspired to the creation o a State the salient features of which would be the rule of law, parliamentar democracy and a market economy. The General Framework Agreement for Peace, signed two and a half years ago, had not yet been fully implemented, but progress was being made daily. To that end the proper functioning of the common institutions, at the level of the three different entities (Serb, Cro and Bosniak) as well as at the national level, was essential, and the authorities were endeavouring to build a society in which those three ethnic groups could live harmoniously side by side.

3. The international instruments ratified by Bosnia and Herzegovina forme an integral part of domestic law, and the Constitution offered substantial guarantees for the protection of human rights. At the national level and at that of each entity, ombudsmen had been appointed; the only difficulty remaining was that of ensuring that the decisions they took were implemented

4. Cooperation with the International Criminal Tribunal for the former Yugoslavia was improving, although there was still room for progress regardi the bringing of accused persons before the tribunal for trial.

5. The numbers of persons who had disappeared during the hostilities was estimated at 20,000. It was easy to imagine the grief of families who had n idea of the fate which had befallen their relatives and - from the purely administrative viewpoint - could not claim any compensation until the bodies were found. The International Commission on Missing Persons in the former Yugoslavia was to be congratulated on its efforts, and the active cooperatio of the authorities of the three entities in the exhumation of victims since March 1998 was to be welcomed. The latter process, like that of identification of bodies, was complex and costly, and the financial support the international community was more than ever essential.

6. Freedom of movement within the country had been greatly facilitated by the harmonization of registration plates on all vehicles and the recent introduction of a single passport for all citizens, irrespective of ethnic origin.

7. 1998 had been proclaimed Return of Refugees year in Bosnia and Herzegovina. The process of rehousing was a complex one, particularly in the big cities, since it involved resettling the original occupants in their homes and finding other accommodation for the persons who had temporarily occupied those dwellings during the war. A very important section of the General Framework Agreement for Peace (Peace Agreement) related to the return of refugees.

8. The new Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia had recently visited Bosnia and Herzegovina, where he had reminded everyone of the need to work unremittingly to ensure the primacy of law and the smooth functioning of the machinery of State.

9. In conclusion, Mr. Jerkic referred to two approaching events of great importance for the country: the strengthening of the relations between Bosnia and Herzegovina and the institutions of the European Union; and the general elections (presidential and parliamentary) which would take place on 12 and 13 September 1998 under the auspices of the Organization for Security and Cooperation in Europe (OSCE). In conclusion, he reaffirmed his conviction that every day Bosnia and Herzegovina, with the invaluable aid of the international community, was taking a new and decisive step towards the establishment of a modern democratic State.

10. Mr. NOBEL (Country Rapporteur for Bosnia and Herzegovina) began by recalling that during its history Bosnia and Herzegovina had been dominated by four great empires - the Roman empire, the Byzantine empire, the Ottoman empire and the Habsbourg monarchy, all of which contained substantial multicultural and multi-ethnic elements. Ethnic enclaves, in which relative peace reigned, developed in large numbers; but problems began to emerge when the nation-State became the prevailing form of organization in Europe, in particular during the 19th century. The multicultural empires were superseded by monocultural nation-States, and later, in the worst of cases, by ethnically pure States. This led the oppressed and threatened ethnic minorites to resort to arms and violence.

11. In Bosnia and Herzegovina ignorance of the past - and its manipulation by unscrupulous historians - had also helped to stoke up into ethnic hatred, for it was impossible to draw lessons from the past.

12. At the beginning of the 1990s (i.e. before the war) the Republic of Bosnia and Herzegovina had approximately 4.5 million inhabitants (Serbs 32 per cent, Croats 18 per cent and Muslims 43 per cent), together with members of minorities from neighbouring countries and asylum seekers from non-aligned countries.

13. The population statistics had inevitably been affected by the war, by the end of which 1.3 million citizens of the former Yugoslavia had fled abroad and another 600,000 had been displaced within their own country. Previously, however, there had been no serious racial or linguistic differences between the different ethnic communities making up the former Federative Socialist Republic of Yugoslavia, the majority of whom were Southern Slavs speaking Serbo-Croat. The current differences were based rather on religious, cultural

and historical considerations; the Serbs were Orthodox Christians and used the Cyrillic alphabet, whereas the Croats were Roman Catholics and used the Latin alphabet, as did the Bosniaks, who were Muslims. However, a long-standing animosity existed between Serbs and Croats. During his period of office President Tito had attempted to reduce the growing political tensions and antagonisms between Serbs and Croats by creating in Bosnia and Herzegovina a Muslim political entity invested with special powers and a system in which the principal federal offices were assigned in rotation to the different ethnic communities. The inhabitants of Bosnia and Herzegovina had remained greatly attached to that system, even during the 1990s.

14. Quoting from the 1998 annual report of Amnesty International: Mr. Nobel stated that during 1997 new, flagrant and large-scale violations of human rights had occurred. In particular, over a million refugees and displaced persons had been unable to return to their homes; many individuals had been held in detention without trial or charge on account of their nationality; and the trials of scores of others, who were accused of violations of human rights or belonged to minorities, had been unfair. In addition, 19,000 individuals - including a large number of individuals who had been reported as having disappeared, whereas they had been placed in detention by the police and the armed forces - had still not been found; and members of minorities were being subjected to attacks and ill-treatment with official acquiescence. Moreover, scores of persons suspected of war crimes were still at large.

15. The implementation of the Peace Agreement was laboriously going ahead, but without reducing in the slightest the animosity existing between the different communities, and in particular between the zones controlled by the Bosniak and Croat authorities respectively, this notwithstanding the agreement on certain matters concluded between the three members of the presidency of Bosnia and Herzegovina chaired by Mr. Aliya Izetbegoviç. However, that agreement did not touch on the nationality question. The authorities of all the parties were still paying little heed to the decisions of the civilian organizations such as the OSCE and the United Nations International Police Task Force, especially with regard to human rights and the provisions of the Peace Agreement.

16. The Helsinki Committee, which had taken premises in the Republika Srpska, had reported on the paralysing opposition between the two mutually hostile wings of the Serb Democratic Party (the Banja Luka and Pale factions), which was preventing any attempt to deal with the flagrant and continuous violations of human rights, and on the lack of concern of the authorities at the particularly vulnerable situations of returnees. In some sectors living conditions were wretched and families were totally indigent. Clans organized and controlled by influential politicans were still carrying on illegal and criminal activities. According to the Committee's own statistics, it had devoted by far the greater part of its legal aid services to victims of violations of property rights (70 per cent) and to deserters (13 per cent). In that connection, Mr. Nobel stated that the provisions of annex 7 of the Dayton Agreement, concerning the granting of amnesty to deserters who had not committed any serious violations of international humanitarian law, were apparently not being applied by the authorities of the Republika Srpska and of the Federative Republic of Yugoslavia. In that connection he recalled draft resolution 1998/79 of the Commission on Human Rights, which called upon the

authorities mentioned to amend their legislation immediately so as to grant amnesty to persons who had avoided conscription or deserted.

17. Mr. Nobel considered the situation of the 50 to 60,000 Roms in Bosnia and Herzegovina particularly disquieting; according to a reliable observer, they had completely disappeared from the country since the war.

18. As regards crime, Amnesty International had reported that in 1997, 54 of the 73 persons indicted by the International Criminal Tribunal were in hiding in the Republika Srpska, where the nationalist political parties had won most of the elections organized in 1997 under OSCE supervision. However, political disagreements were such that only a few assemblies had been able to function, and certain elected assembly members had been unable to take up their duties for fear of being attacked or arrested. However, a new Government under the leadership of Mr. Milovad Dodiç had come into power in January 1998 following the election of the members of the National Assembly, notwithstanding the obstructive tactics of the leaders of the Pale faction.

19. According to the representative of the HCR and a number of other international organizations, that new development could prove to be a turning-point in the generalized implementation of the Peace Agreement, which might be effected without giving rise to a territorial split within the Republika Srpska, where a general election would be held in September 1998. Similarly, according to an internal HCR document, the attitude of municipal authorities in Bosnia and Herzegovina, which were becoming more favourably disposed to the return of the minority groups, and the substantial increase in the number of intercommunity evaluation visits, whether involving one ethnic group or more than one, were particularly positive developments. However, the champions of ethnic separatism were continuing to oppose the return of refugees and the right of refugees to remain in the country by attacking repatriated individuals and burning their houses down and by demonstrating against the return of displaced persons.

20. The Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia had stated in her report (E/CN.4/1998/63) that the principal challenge in the territory would be that of facilitating the return of refugees and displaced persons in order to reverse the effects of the war and of ethnic cleansing.

21. In that field the priority activities of the HCR would relate primarily to bringing refugees and displaced persons back to their communities of origin in Bosnia and Herzegovina, at the same time continuing and developing a "open cities" policy. Ten cities had already subscribed to that policy with the cooperation of the international community. Mr. Nobel asked whether the Bosnia and Herzegovina delegation had additional information on that policy.

22. The HCR estimated that in 1998, 220,000 members of minorities would be repatriated and that 600,000 persons already repatriated (55 per cent of them women and 30 per cent children, persons suffering from serious injury or sickness and aged persons) were dependent on it. It also estimated that there were some 40,000 Serb refugees from Croatia in the Republika Srpska; most of them wished to return voluntarily to Croatia if the Government of that country allowed them to do so, while others wished to return to various regions in

Bosnia and Herzegovina. The OSCE, for its part, had reported that Croat or Bosniak individuals repatriated to their communities of origin frequently received little or no protection from the police or other authorities against attacks against their persons or their possessions. Those difficulties raised thorny and complicated questions concerning property rights. The High Representative of the international community in Bosnia and Herzegovina was cooperating with the office of the federal ombudsman in the search for a means of replacing the wartime legislation on abandoned property by a claims procedure under which the time allowed for the submission of claims would be increased from 6 to 12 months. However, their efforts occasionally encountered systematic obstruction by the administration and by certain de facto municipal authorities established during the war. Another delaying factor was the slow pace at which multi-ethnic police forces were being created.

23. In that connection Mr. Nobel recalled that the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia had recommended the strengthening of the police forces in line with international standards, laying particular emphasis on respect for human rights; the reform of the judiciary; the preparation of periodic reports on human rights, including in-depth investigation of the enjoyment of economic, social and cultural rights; and greater emphasis on civil society and the work of non-governmental organizations. He personally considered that in addition the independent ombudsman should be protected from political pressures; that the falsifications of history and elements fostering ethnic hatred and contempt should all be removed from school books; and that it should be recognized that international support for the defence of humanitarian values would remain necessary for a long time.

24. Those objectives presupposed a number of specific measures. In particular, efforts had to be made not only to instruct members of the police forces in the skills of their profession but also to teach them to respect human rights; in the latter regard they should be subject to supervision by the higher police authorities and the judiciary. The reform of the machinery of justice would require administrative assistance on a very substantial scale directed towards modernizing the functioning of the judicial system.

25. According to information received from the OSCE, a draft law concerning associations and foundations, which should logically lead to recognition of NGOs, was under consideration. However, as legal texts which conferred legal existence on associations on the one hand and restricted their freedom of expression on the other were not infrequent, that information should be welcomed, but with caution, and the State party should be urged not to take away with one hand what it was giving with the other. Normally, where freedom of expression and association were duly respected, NGOs did not require protection in the form of specific legislative provisions.

26. Vigilance was also necessary with regard to the measures to be taken to put an end to hate propaganda. Such propaganda was blatant in the television programmes of the Republika Srpska and were still encountered in school books. It was to be hoped that the agreement between the Ministers of Eduction of the Republika Srpska and the Federation to expunge from school books all elements fostering national or racial hatred would be fully implemented.

27. After welcoming the agreements on passports, the common currency and the harmonization of registration plates on cars, Mr. Nobel stated that in his view if there was any single issue on which the Committee had a duty to express its views forthrightly and unambiguously, that issue was the need to maintain an international presence in Bosnia and Herzegovina until such time as civil peace was firmly established.

28. Mr. Aboul-Nasr took the Chair.

29. The CHAIRMAN began by apologizing to the Bosnia and Herzegovina delegation for being absent at the beginning of the delegation's opening statement. He went on to raise, in his capacity as a Committee member, a question the importance of which seemed to him enhanced by the fact that it was having a damaging effect on relations between two countries - Germany and the United States - which had no connection with the conflict. The United States authorities had criticized the German authorities for having overhastily returned an excessively large number of refugees to their home country under particularly unsatisfactory conditions. Germany considered that it had no lessons to receive from the United States. Mr. Aboul-Nasr asked the Bosnia and Herzegovina delegation to give the Committee detailed information on the conditions in which those refugees were returning to enable the Committee to ascertain whether the problem was in fact an insoluble one.

30. Mr. de GOUTTES recalled that in decision 3 (52), adopted at its previous session, the Committee had expressed regret at the absence of a delegation from Bosnia and Herzegovina when it studied the situation in that State party. He welcomed the presence of a delegation on the occasion of the consideration of the report scheduled for the current session; this meant that dialogue could begin.

31. The experts had received information from a variety of sources, including a note from the Office of the High Commissioner for Refugees entitled "Confidential comments" (distributed without a symbol and in English only), which called for explanations from the delegation. One of the principal current issues in Bosnia and Herzegovina was that of the return of refugees and displaced persons, who were estimated to number over a million; they were finding difficulty in recovering their property and were meeting with hostility from the people who had installed themselves in their places. Clearly, the implementation of annex VII of the Dayton Agreement was running into difficulties. According to Amnesty International, the attitudes of both national authorities and the international community were hindering implementation; on the one hand, the authorities were not taking the necessary measures to improve the conditions under which the refugees were returning, while on the other, the host countries were urging them to return, stating that the necessary conditions had been met. That situation was liable to give rise to conditions which would make the consequences of those large-scale displacements concrete and lasting.

32. Another outstanding problem was that of missing persons. In paragraph 26 of her report on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1998/63) Ms. Rehn, Special Rapporteur of the Commission on Human Rights, drew attention to the distress of families who

were unable to find out what had happened to their loved ones and, as was their right, to dispose of the mortal remains.

33. In paragraphs 22 and 23 of her report Ms. Rehn had referred to another outstanding problem, namely the reform and restructuring of the police and the judicial system. The reform of the police force was essential to make it a genuinely democratic force at the service of the citizens; the judicial system equally needed to be reformed to ensure that judges were genuinely impartial and independent. Individuals suspected of exactions during the hostilities and members of minorities should no longer be subjected to unfair trials of the kind described by Amnesty International; nor should minority populations be subjected to attacks with the tacit agreement of the authorities or, as described in paragraph 24 of Ms. Rehn's report, to discrimination in the areas of housing, employment and education.

34. Mr. de Gouttes concluded his statement with a reference to cooperation between Bosnia and Herzegovina and the International Criminal Tribunal, which in his view was less than satisfactory. As Ms. Rehn stated in paragraph 27 of her report, the national authorities were responsible for arresting all criminals who did not surrender.

35. Mr. van BOVEN considered that attention should be forcibly drawn once again to certain aspects of the situation, even though they had already been mentioned by the Country Rapporteur and described in the confidential note of the Office of the High Commissioner for Refugees, by Ms. Rehn or by her successor. As Mr. Nobel had rightly pointed out, all that the Committee could do was express its views. That was precisely what it should do. It should convey those views not only to the country the situation in which it was studying but also, where appropriate, to the other human rights bodies to draw their attention to problems for which it had a mandate to seek solutions.

36. He turned to the subject of ethnic cleansing, which was possibly the most important of those problems. Clearly, the implementation of annex VII of the Dayton Agreement was far from satisfactory. The programme had fallen far behind schedule. This had facilitated the occupation of particular zones by members of a particular ethnic community - a factor which prevented the former occupants of the zone from finding accommodation. Notwithstanding that situation, the host countries were ruthlessly sending the refugees back. The situation was well described in paragraph 6 of the updating document produced by the Office of the United Nations High Commissioner for Refugees on the situation in Bosnia and Herzegovina. Mr. van Boven stressed the low level of protection extended to returnees, both in law (through necessary legislation) or in practice (on the part of law-enforcement officials). He reminded the Committee that it had made a general recommendation on the subject.

37. The satisfactory resettlement of former refugees also depended on property legislation. The latter should be brought into conformity with international standards (particularly in the Republika Srpska) and fully implemented.

38. In conclusion, he shared the concerns expressed earlier over the lack of cooperation with the International Criminal Tribunal by the responsible bodies; the treatment of Roms and Sintis; and the possible withdrawal of the

international presence from Bosnia and Herzegovina. A continued presence was in his view essential from the humanitarian standpoint as well as that of international security.

39. Mr. GARVALOV noted with satisfaction that, for the first time since the situation in Bosnia and Herzegovina first became a matter of concern to the Committee, he had received encouraging signs regarding the solution of the main problems. The fact deserved to be reported in the conclusions of the Committee.

40. Clearly, great difficulties still remained; they were, moreover, being aggravated by the passage of time and by national and international considerations of a political character. One problem, the seriousness of which could not be overemphasized, was that of the return of the refugees and its corollary - the adoption of measures of a nature to create conditions in which they could not only return but also be accepted. That was a matter for education, not only in schools but also among the adult population. Bosnia and Herzegovina would need all the support possible in the pursuit of this task. After the terrible events which had torn the country apart, the completion of that task would inevitably take a long time; but the final objective should be the peaceful coexistence of the entire population of Bosnia and Herzegovina - Muslims, Serbs, Croats and others.

41. He then asked two questions on matters of minor importance. Firstly, referring to paragraph 7 of the core document (HRI/CORE/1/Add.89), stating the number of Muslims-Bosniaks, he asked whether there were Bosniaks who were not Muslims and who the inhabitants classified as "others" were. Paragraph 31 of the same document contained a statement to the effect that Bosnia and Herzegovina had become a complex State and that the Chamber of Peoples was made up of 30 Muslim Bosniak delegates, 30 Croat delegates and other delegates. He asked whether the delegates in the last-mentioned category represented the Republika Srpska.

42. Mr. Diaconu resumed the Chair.

43. Ms. McDOUGALL asked the Bosnia and Herzegovina delegation to describe in detail the measures taken, and the activities under way or planned, to give practical effect to the Dayton Agreement. She also asked for information on the present situation of the seven survivors of the Srebrenica massacre who had been convicted in the Republika Srpska of murder or illegal possession of weapons. Finally, she asked what had become of the instruction purportedly given by the Minister of Education that pupils should be segregated on an ethnic basis, officially to avoid discrimination, particularly against Croats. She had reason to believe that the measure had been rescinded, but asked what was being done to moderate the adverse effects it might have had.

44. Mr. RECHETOV reminded the meeting that, when the Hague Tribunal for the former Yugoslavia was established, it had been decided not to introduce or codify new provisions of international criminal law. Moreover, the Security Council had not defined the concept of ethnic cleansing. The result was an absence of a legal basis for the concept; that would explain why the International Criminal Tribunal had not been able to try anyone for those crimes.

45. Nobody seemed to be concerned with the judiciary system in Bosnia and Herzegovina. He, however, considered that the country would not be truly cleansed until its judicial machinery had been restored and would be able to try persons who had committed crimes during the war, setting aside all national prejudices.

46. Mr. van BOVEN considered Mr. Rechetov's criticisms of the International Criminal Tribunal for the former Yugoslavia unfounded. He pointed out that although the concept of ethnic cleansing had been defined in political terms by the General Assembly, no generally accepted definition existed in international criminal law. For that reason the Security Council did not mention it in the Statute of the International Criminal Tribunal for the former Yugoslavia. If it had done so, that would have been tantamount to creating new elements of law; but that was not its role.

47. Mr. JERKIC (Bosnia and Herzegovina) thanked the members of the Committee for their comments and welcomed the fact that the Special Rapporteur for Bosnia and Herzegovina intended to propose that the Committee should recommend the continuance and strengthening of the international presence in Bosnia and Herzegovina to help establish an even more democratic society there.

48. There had been no official census since 1991. However, the existence of over a million refugees and of 600,000 displaced persons had led to radical population changes in the nationwide structure of cities and regions. Their return did not only give rise to security problems; their hesitation to return to Bosnia and Herzegovina was frequently to be attributed to conditions of total uncertainty with regard to accommodation and employment. The return of refugees and displaced persons inevitably required the creation of the preconditions necessary for lasting economic development.

49. He stated that the consolidation of the police force into mixed units was proceeding successfully throughout the country. He also pointed out that cooperation with the international police forces was also improving steadily. However, he admitted that in certain regions the inhabitants had systematically refused to allow refugees and displaced persons to return. Such incidents were due to the influence exercised by certain local leaders who could not or refused to understand that things had changed. The Bosniak authorities were fully aware of those problems and were endeavouring to overcome them.

50. The question of segregation in schools resulting from the application of different school curricula had given rise to considerable interest in the Bosnian press. The Ministry of Education had begun the revision of those curricula with a view to excising all elements fostering hate and all mendacious historical data.

51. The search for missing persons was a highly sensitive humanitarian question. Substantial improvements had been achieved in that field thanks to the action coordinated by the International Commission on Missing Persons in the former Yugoslavia. Senator Dole, the head of the Commission, had been to Bosnia and Herzegovina three times and had met representatives of various political parties. The exhumation and identification of bodies was extremely

costly, and the Commission was endeavouring to find sufficient financial resources to complete its task.

52. In his view the process of democratization in Bosnia and Herzegovina was irreversible; but the country had to be able to rely on the concerted action of the international community.

53. Mr. NOBEL (Country Rapporteur for Bosnia and Herzegovina) began by urging the Committee to state clearly that it wished the federal ombudsman, and the other ombudsmen elsewhere in the country, should be able to continue with their work. He also noted with satisfaction that steps had been taken to review and improve school curricula with a view to ensuring that children were taught tolerance and respect for humanitarian values. The fate of the Roms, and the situations of individuals charged with desertion, should be examined in greater depth.

54. Speaking on the subject of the return of refugees and displaced persons to Bosnia and Herzegovina, and bearing in mind the confidential HCR note, Mr. Nobel remarked that the countries of asylum should slow down the process of voluntary repatriation until favourable conditions had been established. He recalled that, under the terms of the Geneva Convention on the Status of Refugees, voluntary repatriation was acceptable only if three conditions were met, namely: first, a political solution to the conflict which forced the persons concerned to flee had to have been accepted by the country of origin; secondly, the conditions of amnesty had to be clearly laid down, so that all concerned could determine whether they were liable to be charged in respect of events which occurred before they left; and thirdly, the social and economic context had to be such as to enable individuals who decide to return to their country to live decently.

55. In conclusion, he considered, like Mr. Jerkic, that the presence of the international community in Bosnia and Herzegovina should be extended.

56. Mr. RECHETOV proposed that the Committee should adopt a declaration inviting countries of asylum to slow down the repatriation process. However, the Committee should not offer a legal basis for the declaration; for in his view the individuals who had left Bosnia and Herzegovina were not political refugees within the meaning of the Geneva Convention on the Status of Refugees.

57. The CHAIRMAN stated that the Committee had concluded the consideration of the situation in Bosnia and Herzegovina, and that he would rule at a later meeting on whether the Committee should continue with the examination of the implementation of the Convention in Bosnia and Herzegovina under the heading of prevention of racial discrimination or under the normal procedure laid down in article 9 of the Convention.

58. The Bosnia and Herzegovina delegation withdrew.

The meeting rose at 5.45 p.m.